Supreme Court, U.S.
FILED

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1996

SANT PALLAN, Petitioner

vs.

THE PEOPLE OF THE STATE OF
CALIFORNIA, Respondent

On a Writ of Certiorari to the
Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

Alexander Lambrous
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QUESTIONS PRESENTED

I. Whether petitioner was unconstitutionally denied due process of law by the lower courts' disallowance of his filing of a cross-complaint which included requests for relief for declaration of constitutional rights, civil rights violations, and inverse condemnation.

II. Whether petitioner was unconstitutionally denied due process of law by the lower courts' awarding the respondent punitive damages without meaningfully computing petitioner's net worth.

PARTIES TO THE PROCEEDINGS BELOW

All parties appear in the caption of the case in the United States Supreme Court.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

Sant Pallan, Petitioner,
v.
The People of the State of California, Respondent.

Sant Pallan, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of California, entered in the above-entitled case on November 13, 1996.

OPINIONS BELOW

The Court of Appeal of the State of California, Second Appellate District, Division Six has issued an opinion in this case, a copy of which appears in the Appendix to this Petition, at page 13. A copy of the denial for review by the Supreme Court of California appears in the Appendix to this Petition, at page 10.

JURISDICTION

Review in the Supreme Court of California was denied on November 13, 1996. The jurisdiction of this Court is invoked under Title 28, Section 1257(a) of the United States

Code.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States. This section reads as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner is the majority owner in fee simple of improved residential real estate in Santa Barbara County, California. The underlying controversy arose out of petitioner's attempts to convert the basement of the house into habitable space. On February 21, 1990 petitioner received a land use permit from the county zoning department which allowed him to

convert the basement into a living space with bedroom, dressing room, bathroom and furnace.

Two years later, after construction was completed and petitioner had also rented the unit, the county flood control department reversed its prior approval of the conversion and determined that the project did not conform to department policy. (The county building ordinance neither gives applicants notice of, nor the proper method, to challenge the findings of the flood control department.) Petitioner did not challenge the findings through the customary channels, and the county initiated a civil action on July 9, 1993 for injunctive relief and civil penalties based upon alleged violations of the zoning and building ordinance.

On December 19, 1993 petitioner filed a cross-complaint for declaration of rights, inverse condemnation, deprivation of civil rights, negligent supervision, and intentional infliction of emotional distress. The court denied both the petitioner's motion and the motion for reconsideration of the motion to file the cross-complaint without determining that petitioner failed to act in good faith in bringing

cross-complaint, as required by due process. Petitioner initially raised this issue on the same Constitutional grounds as presented here in the Appellant's Opening Brief in the Court of Appeal for the State of California in the Second Appellate District, Division Six, on page 13 of the brief.

The matter was tried without giving petitioner the opportunity to attempt to prove the allegations of the cross-complaint. The trial court determined that petitioner was liable as charged and penalized him $75,000 without meaningfully determining petitioner's financial condition, as required by due process. Petitioner initially raised this issue on the same Constitutional grounds as presented here in the Appellant's Opening Brief in the Court of Appeal for the State of California in the Second Appellate District, Division Six, on page 48 of the brief.

In sum, the courts below denied petitioner's Constitutional rights to due process by improperly prohibiting him to assert his rights through his cross-complaint, and denied him his Constitutional rights to due process by failing to meaningfully compute punitive damages.

REASONS FOR ALLOWING THE WRIT

Washington Ex. Rel. v. Seattle Title Trust Co. v. Roberge (1928) 278 U.S. 116, 121, 73 L. Ed. 210, 49 S. Ct. 50 held that the rights of an owner to devote his land to any legitimate use is properly within the protection of the Constitution. According to Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306, 314, 94 L. Ed. 865, 70 S. Ct. 652, a person is owed the elementary and fundamental requirement of due process in any proceeding which is to be accorded finality. That is, notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Likewise, pursuant to Harris v. County of Riverside 904 F.2d 497, 503 (9th Cir. 1990), loss of the use and enjoyment of his land deprives an owner of a constitutionally protected property interest; he is therefore entitled to constitutional procedural due process before a county deprives him of that property interest.

California Code of Civil

Procedure section 426.50 states, "A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant upon terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action."

There was no evidence in the lower court and no reference in the appellate court's decision that the appellant failed to act in good faith in preparing and moving for leave to file his cross-complaint. It was improper for the court of appeal to not find that appellant failed to act in good faith, and then affirm the trial court's decision that plaintiff should be denied his rights to have his causes of action heard. All the more so because the statute mandates a liberal construction in favor of

mandates a liberal construction in favor of allowing cross-complaints.

Furthermore, the appellate court's statement that "The word 'compulsory' never crossed anyone's lips in the proceedings concerning appellant's motions regarding his cross-complaint." shows that it used an improperly strict standard of review. A liberal interpretation of the statute, as specifically prescribed by the statute, was not used by the lower courts by requiring a litigant (an in pro per party, no less), to use particular, specific language in order to have his cross-complaint heard. The error here is even more evident when it was plain and obvious on the face of the cross-complaint that it involved the same events as the complaint against petitioner.

In sum the lower courts' summary rejection of the cross-complaint without evidence of a lack of good faith and its failure to liberally allow the filing of the pleading, resulted in forfeiture of causes of action and loss of rights without due process of law as required by the Constitution.

Concerning punitive damages, the Court has made clear a constitutional mandate for

process. (Pacific Mutual Life Ins. Co. v. Haslip (1991) 449 U.S. 1, 18, 113 L. Ed.2d 1, 111 S. Ct. 1032.)

People v. Toomey (1985) 157 Cal. App.3d 1, 24-25, provides that penalty provisions for unfair business practices have been held sufficiently similar to exemplary damages as to permit discovery of the defendant's financial condition in appropriate cases. Exemplary damages must not be disproportionate to a defendant's net worth. Consequently, petitioner's net worth had bearing on the propriety of a penalty under Business and Professions Code section 17206 and under the county's building code and zoning ordinance.

Petitioner contends that the penalty assessed against him is disproportionate to his net worth and financial condition. The reason for the exaggeration of his financial situation is that the lower courts failed to compute petitioner's assets and liabilities. The lower courts had neither evidence before them of petitioner's substantial liabilities, nor the value of his assets.

Furthermore, the lower courts in a less than reasonable perspective turned appellant's lack of employment into an asset.

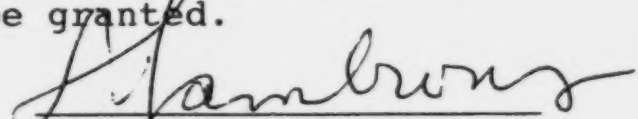
assets.

Furthermore, the lower courts in a less than reasonable perspective turned appellant's lack of employment into an asset. Typically, the loss of a job spells financial trouble for a working person, such as petitioner. The lower courts' attention should have been upon petitioner's then present financial condition. They should not have considered petitioner's former job, at a not extraordinary by local standards $60,000 a year salary, as evidence of his financial situation.

The petitioner has been denied due process by the lower courts' excessive penalty assessment by ignoring appellant's liabilities and his loss of income through unemployment. The penalty against petitioner was assessed without meaningful judicial computing of punitive damages based upon due process concerns.

CONCLUSION

WHEREFORE, petitioner respectfully prays that a writ of certiorari be granted.



Alexander Lambrous
Counsel for Petitioner

APPENDIX

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA SECOND
APPELLATE DISTRICT
DIVISION SIX

COURT OF APPEAL-SECOND DIST.

FILED
AUG 26, 1996
JOSEPH A. LANE, CLERK
DEPUTY
CLERK

THE PEOPLE,
Plaintiff and Respondent
v.
SANT PALLAN,
Defendant and Appellant.

2d Civil
No.B08778
(Super.
Ct. No.
SM82432)
(Santa Barbara County)

Sant Pallan appeals from a judgment of injunctive orders and civil penalties in the sum of $75,000, all but $30,000 of which were conditionally stayed. He alleges as prejudicial error the following: 1) Santa Barbara County Zoning ordinance Chapter 35-327 and Building Code Chapter 10, sections 10-2.13 and 10-2.24 are invalid in that they do not provide lawful notice of administrative remedies and that this constitutional defect denied him due process by depriving him of the use of his land without notice of appeal rights; 2) the trial court abused its discretion in denying his motion to file a cross-complaint and petition for mandamus; 3) the trial court erred in excluding evidence pertaining to the validity of the flood control district's findings; 4) the trial court erred in not finding the county estopped as a matter of law;

5) the instruction to the jury on the defense of equitable estoppel was incorrect and prejudicial; and 6) the civil penalties were unjustly assessed. We affirm.

FACTS

Appellant owns property at 1214 Cuesta Street, Santa Ynez, California. The property is and has been zoned for single-family residence under the county's zoning ordinance. The applicable zoning limits each single-family residence to one kitchen facility. Beginning in 1988, appellant undertook to construct a basement-like habitable structure beneath the existing level of the residence. He was aware that before he could make the basement habitable, he would have to obtain permits. He commenced construction without a permit.

When a neighbor complained about appellant's use of his property, county inspectors investigated. Appellant attempted

to obtain permits for work already completed. Because a building inspector was aghast to discover that appellant had excavated beneath the structure without adequate shoring, appellant was told to install a retaining wall or the property would be condemned. Appellant had tenants living in the house at the time and appellant was given temporary permission to undertake remedial work to keep the house from falling until he obtained proper permits. Appellant finally obtained a permit for the retaining wall. He also obtained a permit for "footer" plumbing to allow for later connections, assuming he obtained the proper permits. At one point, the county issued a stop-work order for constructing without benefit of a permit and informed him that the basement area could not be used for human occupancy.

Appellant was told that he could not use the basement for a

habitable structure but that it could be used for storage. Some of the signoffs on permits by county inspectors were obtained on the basis that appellant was going to use the space for storage and perhaps a portable spa. The flood control district wrote appellant's attorney November 5, 1991, and informed her and appellant in no uncertain terms that it never had and never would permit a habitable structure in that location and that appellant had undertaken the construction illegally. The flood control district deemed the structure unsafe because its elevation was subject to potential flooding hazards.

Appellant did not challenge the flood control district's refusal to approve a permit, but instead appeared willing to turn the area into a storage facility. Instead of building a storage area, appellant leased the basement area to

residential tenants. Since 1989, appellant has leased separate portions of the property to three to six tenants at any given time and charged each tenant from $250 to $425 per month. For a period of about 12 months, appellant allowed at least one tenant to install and use her own separate stove, apart from the existing kitchen, and asked her not to tell anyone about it.

The Santa Barbara District Attorney filed a complaint for permanent injunction, civil penalties, and other equitable relief alleging that appellant violated zoning and building ordinances by building and converting structures without proper permits and by allowing the structure to be used for habitation without having obtained all required permits and in violation of zoning. It also alleged that appellant engaged in unfair business practices in violation of Business and

Professions Code section 17200 et seq. Four months after he answered the complaint, appellant filed a motion for leave to file a cross-complaint based on Code of Civil Procedure[1] sections 428.10, 428.20, 428.30 and 428.50, a motion to sever, and a motion for change of venue. Attached to the motions was a petition for administrative mandate (§ 1094.5) or mandate (§ 1085) and a cross-complaint for declaration of rights, inverse condemnation, deprivation of civil rights, negligent supervision and intentional infliction of mental distress. The court denied the motions.

The trial court impaneled an advisory jury at appellant's request. The jury considered six special verdict questions and unanimously decided each in favor of

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[1]All statutory references are to the Code of Civil Procedure unless otherwise stated.

respondent. The court stated that it was in "total agreement" with the advisory verdicts, and stated its intention to enter judgment accordingly. The court subsequently assessed civil penalties against appellant in the amount of $75,000, all but $30,000 conditionally stayed.

DISCUSSION

1. Notice of Administrative Remedies And Due *Process*

Appellant asserts that Santa Barbara County Zoning Ordinance Chapter 35-327 and Building Code Chapter 10, sections 10-2.13 and 10-2.24, are invalid in that they do not provide lawful notice of the right to appeal the decisions of the resource management department regarding the issuance, revocation or modification of land use permits or the decisions of building inspectors. He argues that he was denied due process when the county

deprived him of his property rights without a hearing. Appellant acknowledges that both the zoning ordinance and the building code provide the opportunity to appeal decisions concerning the issuance, revocation or modification of land use permits and acts or interpretations of building officials. He asserts, however, that these ordinances are constitutionally defective because they do not provide for mandatory notice of these rights.

A problem in assessing this issue is that the record contains only selected excerpts from the Santa Barbara County Building Code and Zoning ordinance. An appellant must set forth all the material evidence on the subject and not simply the evidence believed to support its contention, or the claim of error is waived. (Sprague v. *Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1027-1028.)

Contrary to appellant's inference, Building Code section 10-2.13 requires that if a building official determines that work has been done without the required permits or completed in violation of the code, the building official may cause notice of noncompliance to be recorded and, shall notify the owner of the property of such action." Although appellant's counsel pointed out to the trial court that the county could not recover administrative costs from appellant due to its failure to follow proper notice procedures set forth in the zoning ordinance, he never alleged any other defect in the proceedings due to lack of notice. It is apparent that appellant's trial counsel was aware of administrative procedures in the ordinances at issue.

Even assuming that the ordinances in question are defective for failure to give alleged

violators notice of their right to challenge decisions, it does not necessarily follow that appellant was denied due process. (See *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 116.) Appellant was represented by counsel at the time the flood control district notified him by letter to his counsel that it would not issue a permit for a habitable structure. Appellant's proffered petition for administrative mandamus and cross-complaint, which he prepared in propria persona, alleged that "[t]he appeal provisions, provided by County ordinance allow for discretionary review by the Board of Supervisors to determine whether the issuance of the permit is consistent with similarly situated and sized parcels in the area and whether development of the property would adversely affect the health and safety of the neighborhood...."

Consequently, appellant was

constructively, through counsel, and personally aware of his administrative review rights. He fails to substantiate any denial of due process.

2. Rulings Regarding Mandamus, Cross-Complaint And Flood Control District's Findings

Appellant asserts that the trial court erred in "declining" to accept appellant's petition for mandamus and abused its discretion in denying his motion to file a cross-complaint. He argues that if a cause of action arises out of the same transaction or occurrence, the cross-complaint is compulsory. (See §§ 426.30, subd. (a), 428.10.) According to appellant, his cross-complaint was governed by section 426.50 which states: "A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply

to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action."

Appellant contends that the denial of a motion to file a compulsory cross-complaint requires a finding of bad faith and that no such finding was made here. *(See Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 99; *Foot's Transfer & Storage Co. v. Superior Court (1980)* 114 Cal.App.3d 897, 902.) Appellant, however, filed and argued his motion to file cross-

complaint and motion for reconsideration under sections 428.10, 428.20, 428.30 and 428.50, all of which concern permissive cross-complaints. The word "compulsory" never crossed anyone's lips in the proceedings concerning appellant's motions regarding his cross-complaint.

The court did not abuse its discretion in ruling that appellant would not be prejudiced by denial of his motion. Appellant wanted the court to sever the causes of action for mandamus and declaratory relief from the rest of his cross-complaint if the court granted his motion. Appellant admitted that the issues in the first three causes of action, i.e., appellant's vested rights to a permit on the theory of estoppel or a permit already granted, were the same as those to be litigated in respondent's action against him. If appellant prevailed on his defense in the instant action, he could

pursue his other causes of action. If he did not prevail, the other causes of action would be moot. Consequently, whether or not appellant's cross-complaint were "compulsory," he can show no prejudice from the court's ruling.

Nor did the trial court abuse its discretion by excluding appellant's proffered evidence that the flood hazard did not apply to his property and that his property is above the required elevation for habitable space. The determination that appellant's site was within a flood hazard zone precluded the issuance of a building permit. Whether the flood control district was reasonable in reaching this determination, however, was a subject of administrative appeal and not relevant to whether appellant was building without a permit or whether the county was estopped from so asserting. There can be no prejudicial error where the court's

ruling is not an abuse of discretion. (*Reynolds v. Natural Gas Equipment, Inc.* (1960) 184 Cal.App.2d 724, 740.) The trial court also struck testimony of respondent's witness that appellant's construction was "very hazardous" because it was below the "escape elevation" for floods and instructed the jury to disregard this testimony. We are entitled to presume that the jury followed the court's instructions. *(People v. Hamilton* (1988) 45 Cal.3d 351, 375.)

3. *No Estoppel As A Matter Of Law Or Fact*

Appellant asserts that the facts are undisputed and that only one reasonable conclusion can be drawn from them--that the county is estopped through its actions from obtaining an injunction and penalties for appellant's construction. Whether estoppel will lie against a public entity is not

just a question of fact. "Whether the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify the effect of the estoppel on the public interest must be decided by considering the matter from the point of view of a court of equity." *(Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 776.) The burden is on the party asserting estoppel to prove it. *(Domarad v. Fisher & Burke, Inc. (1969)* 270 Cal.App.2d 543, 555-556.)

Appellant disregards the rules of substantial evidence appellate review and marshals evidence only in support of his defense of estoppel. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) To determine the existence of substantial evidence, we look to the entire record. *(Smith v. County of*

770, 776.) There was sharp contradiction between appellant's testimony on this issue and the testimony of respondent's witnesses. Substantial evidence, in fact close to overwhelming evidence, supports that appellant did not obtain approval to construct habitable space in the basement. Different departments gave appellant after-the-fact approval to correct deficiencies in order to obtain proper permits. Appellant's own architect, Dwight Gregory, admitted that the flood control district never approved the basement conversion to habitable space. In fact, no county official ever considered his permit an approval for habitable space. Appellant failed to meet his burden of proving estoppel.

Appellant also contends that the trial court's instruction to the jury an the defense of equitable estoppel was incorrect, misleading

estoppel was incorrect, misleading and prejudicial.[2] Appellant asserts that the trial court failed to instruct that "statement" could be oral or written verbal expression or nonverbal conduct. (See Evid. Code, §§ 125, 225, 623.) His counsel had suggested that the court add "by

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[2]The particular instruction at issue is as follows: "In order to find an estoppel or waiver defendant must prove all of the following: [¶] One, the county through the statements of its employees told defendant that he could do the activity in question without ever having to get a permit or was told that he could construct habitable quarters in the basement area and later apply for a permit which would definitely be approved, and; [¶] Two, the defendant relied on such statements in constructing the habitable quarters in the basement, and; [¶] Three, that when defendant made the improvements to convert the basement area to habitable quarters he was unaware that final approval was still required and that such approval might be denied."

the instruction as given. Estoppel may also arise from silence when there is a duty to speak. (*Skulnick* v. *Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 891.)

The trial court did not use the term "conduct" because, in the context of this case, it could have been ambiguous and might have confused the jury into thinking that "conduct" would not have to be an affirmative act. The cases upon which appellant relies *(Stanson v. San Diego Coast Regional Com. (1980)* 101 Cal.App.3d 38; *Anderson v. City of La Mesa (1981)* 118 Cal.App.3d 657; *Health Maintenance Network v. Blue Cross of So. California* (1988) 202 Cal.App.3d 1043) did in fact concern affirmative representations, written agreements, or permits issued which were held to estop the governmental entities from enforcement of zoning or other regulatory rights.

Moreover, whether an

Moreover, whether an instruction was misleading depends upon all the circumstances of the case, including the evidence and other instructions given. (*Bracisco v. Beech Aircraft Corp.* (1984) 159 Cal.App.3d 1101, 1107.) Instructional error is considered prejudicial where it is probable that the jury's verdict may have been based on the erroneous instruction. (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 335.)

Our review of the entire record and other instructions leads us to conclude that it is not reasonably probable that the addition of "conduct" or further explanatory instructions on the definition of statement" would have produced a different result. (*People v. Wright* (1988) 45 Cal.3d 1126, 1144.) Appellant has failed to demonstrate prejudicial instructional error. (*Sprague v. Equifax, Inc., supra,*

4. *Civil Penalties*

Appellant asserts that he does not know under which statutes he was penalized. The complaint, however, alleged violations of, and sought penalties under, the County Building Code and the County Zoning Ordinance, as well as under Business and Professions Code section 17200 et seq. Unlawful business practices, under Business and Professions Code section 17200 encompasses "'"anything that can properly be called a business practice and that at the same time is forbidden by law."'"(*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 383; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1266.) An action based upon this section "borrows" violations of other laws which when violated become independently actionable under Business and Professions Code section 17200 et seq. and subject to the penalties set forth therein.

the penalties set forth therein. (*Farmers, supra,* at p. 383.) Both the County Building Code and the Zoning Ordinance provide for civil penalties not to exceed $25,000 for each day a violation continues to exist. (Santa Barbara County Building Code, § 10-2.17; Santa Barbara County Zoning Ord., § 35-185.4.2.a.)

Appellant argues that building code section 10-2.17 does not apply to him because there is no evidence that the penalties were assessed for any acts in conjunction with other violations necessary based on the language "who wilfully maintains a substandard, hazardous or other nonconforming structure or use in violation of this chapter and chapter 14 of the Santa Barbara County Code, the Uniform Housing Code, other adopted uniform codes, the state housing law, or of any rule, regulation, order or permit issued thereunder . . . . " (Italics

Appellant never challenged imposition of penalties on this basis in the trial court although his counsel challenged the applicability of other provisions. Moreover, our reading of other sections of the building code, including the provision that remedies within chapter 10 are cumulative to each other and similar wording in section 10-2.16 regarding injunction, leads us to conclude that the only rational construction of section 102.17 is that a violation of any of the provisions justifies injunction or penalty. As respondent notes, it would make no sense to require a combination of such disparate violations as structural integrity defects and grading offenses.

Appellant further argues that respondent failed to carry its burden to provide necessary information of appellant's financial condition. The standard of review

condition. The standard of review for imposition of Civil penalties is abuse of discretion. (*People* ex rel. *Smith v. Parkmerced Co.* (1988) 198 Cal.App.3d 683, 692.) Penalty provisions for unfair business practices have been held "'sufficiently similar to exemplary damages as to permit discovery of the defendant's financial condition in appropriate cases."' (*People v. Toomey* (1985) 157 Cal.App.3d 1, 24.) Exemplary damages must not be disproportionate to a defendant's net worth. (*Ibid.*) Consequently, appellant's net worth or wealth has bearing on the propriety of a penalty under Business and Professions Code section 17206 and under the County Building Code and Zoning Ordinance. (*Id.*, at p. 25; accord, *People* ex rel. *Parkmerced Co., supra*, at p. 692.)

The court here had evidence that appellant gave up a $60,000 a year job to attend to these

on the property, and had rented his property to up to 6 tenants at approximately $400 per month. There were also references in the record to the other properties appellant owns. The court was entitled to infer from the evidence before it that appellant had sufficient financial ability to pay the civil penalties assessed. There was no abuse of discretion.

The judgment is affirmed. Each party to bear its own costs on appeal.

NOT TO BE PUBLISHED.

STONE, P. J.

We concur:

GILBERT, J.

YEGAN, J.

Richard A. St. John, Judge
Superior Court County of Santa Barbara

Sant R. Pallan, in pro. per., for Defendant and Appellant.

Thomas W. Sneddon, Jr., District Attorney, M. Edward Alston, Deputy District Attorney, Stephen Shane Stark, County Counsel, and Peter J. Rensel, Deputy County Counsel, for Plaintiff and Respondent.

Second Appellate District, Division Six, No. B087788

S056521

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT

THE PEOPLE, Respondent **FILED**

NOV 13 1996

v. Robert Wandruff

Clerk

SANT PALLAN, Appellant DEPUTY

Appellant's petition for review DENIED.

/s/ GEORGE

Chief Justice